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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of)
)
Implementation of the) CC Docket No. 96-152
Telecommunications Act of 1996)
Telemessaging, Electronic)
Publishing and Alarm Monitoring)
Service)

To: The Commission

**REPLY COMMENTS OF
ENTERGY TECHNOLOGY HOLDING COMPANY**

Pursuant to Section 1.415^{1/} of the Federal Communications Commission's ("FCC's") Rules, Entergy Technology Holding Company ("ETHC") hereby files Reply Comments in response to the Comments filed in the above captioned proceeding.

I. INTRODUCTION

1. In its Notice of Proposed Rulemaking (NPRM) in the above captioned proceeding,^{2/} the FCC is seeking to establish

^{1/} 47 C.F.R. Section 1.415

^{2/} In the Matter of Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services, CC Docket 96-152; Adopted and Released July 18, 1996.

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non-accounting separate affiliate and nondiscrimination safeguards, pursuant to its implementation of Sections 274 (Electronic Publishing by Bell Operating Companies), 275 (Alarm Monitoring Services) and 260 (Provision of Teleessaging Service) of the Telecommunications Act of 1996.^{3/}

2. In the NPRM, the FCC articulated an overriding goal of "replacing stagnant monopoly regulation with the discipline of dynamic competition" in the markets for teleessaging, electronic publishing and alarm monitoring services. NPRM at para. 9. At the same time, the FCC recognized that the "near monopoly" power of the Bell Operating Companies ("BOCs") in the local exchange services market gives rise to the potential for anti-competitive effects in the market for these information services. NPRM at para. 7.

3. ETHC applauds the Commission in its efforts to implement regulations governing the alarm monitoring services market that will strike the appropriate balance between deregulation of the market on the one hand, and protection of market participants and consumers against unfair or anti-competitive practices on the other.

^{3/} Pub. L. No. 104-104, 110 Stat. 56 (1996), codified at 47 U.S.C. 151 et seq.

II. PROVISION OF ALARM MONITORING SERVICES

4. ETHC agrees with the FCC in its conclusion that "resale" constitutes the provision of alarm monitoring services, NPRM at para. 71, and notes that the Alarm Industry Communications Committee also shares this view. Comments of AICC at 13.

5. ETHC is also in agreement with AICC that, of the BOCs, only Ameritech was engaged in the provision of alarm monitoring activities as of November 30, 1995, so as to be subject to the Existing Activities exemption under Section 275(a)(2) with respect to those activities. Comments of AICC at 13.

6. In this regard, ETHC agrees with the FCC that the provision of underlying basic tariffed services, by itself, does not constitute the provision of "alarm monitoring services" under Section 275. NPRM at Para. 69. Though they may be used in the provision of alarm monitoring services by other entities, such services, without more, constitute only a limited component of the services defined by Section 275(e), and are not provided to end-users. Accordingly, ETHC is in agreement with AICC in its assertion that U.S. West's "Scan-Alert" and "Versanet" services,

and Ameritech's "Scan Alert" service, are not alarm monitoring services provided to the public, so as to bring them within the Existing Activities exception established by Section 275(a)(2). Comments of AICC at 13-15.

7. With respect to the issue of what activities constitute the provision of alarm monitoring services, ETHC is in agreement with AICC that billing, collection, sales and marketing by a BOC can collectively or individually constitute the provision of alarm monitoring services. Comments of AICC at 16-17. As AICC correctly notes, any relationship between a BOC and an alarm monitoring services provider that gives the BOC a financial stake in that provider's success, vis a vis other competitors, fosters the type of anti-competitive incentives that Section 275 was designed to prevent. Such relationships should be expressly prohibited under the FCC's rules.

8. In this regard, ETHC takes exception to the position of SBC Communications ("SBC") that "[s]o long as the alarm monitoring service customer maintains a direct customer-provider relationship with an unaffiliated alarm monitoring service provider, and a BOC performs none of the functions that

constitute 'alarm monitoring service,' there is no Section 275(a)(1) obstacle." Comments of SBC at 19.

9. As previously stated, ETHC agrees with the FCC's conclusion that the provision of the underlying basic tariffed telecommunications services alone does not constitute alarm monitoring services for purposes of Section 275. Supra, at para. 6. When a non-exempt BOC seeks to go beyond this activity, and assume an integral role in facilitating the delivery of services, and virtually everything that it encompasses, to a customer, it runs afoul of Section 275(a). This is so regardless of whether the customer actually contracts and deals directly with the BOC.

10. Section 275(a), it should be remembered, is concerned with the provision of alarm monitoring services by BOCs. Congress' plain directive is that the BOCs are not, except in accordance with limited and well-defined exceptions, permitted to engage in the provision of alarm monitoring services for a period of five years. This prohibition reflects Congress' judgment as to the best means of ensuring a fair opportunity for all participants in the alarm monitoring services market. The joint provision of services, with strategically allocated functions as

between the BOC and the alarm services partners, will defeat Congress' intent as surely as direct provision of such services by BOCs alone.

11. ETHC is, accordingly, in agreement with AICC that ratifying Southwestern Bell Telephone Company's ("SWBT's") CEI Plan for Security Service would be an invitation to undo the Congressionally mandated ban on BOC entry into alarm monitoring services. Comments of AICC at 19-20. Permitting this or any similar types of arrangements, would effectively undermine Congress' clear intention to prohibit non-exempt BOC's from acting as providers of alarm monitoring services during the statutory five year period. ETHC submits that the rules promulgated by the FCC should echo Congress' intent and clarify that arrangements involving the BOCs and alarm monitoring providers which go beyond the mere provision of basic tariffed service are impermissible during the statutory period.

III. THE EXISTING ACTIVITIES EXCEPTION

12. ETHC also agrees with AICC that activity in the style of Ameritech's acquisition of alarm monitoring assets from Circuit City are prohibited by section 275(a)(2). Comments of

AICC at 22-26. ETHC, accordingly, urges the Commission to adopt rules which will clarify that such activities, which exceed both the letter and the spirit of the statute, are impermissible. The limited carve out of reciprocal customer exchange, set forth in the Existing Activities provision, demonstrates that Congress did not intend to permit de facto acquisitions of unaffiliated alarm service business. Accordingly, ETHC supports AICC's proposals with regard to the FCC's implementation of the Existing Activities provision as they relate to the definition of "equity interest" and "financial control." Comments of AICC at 25.

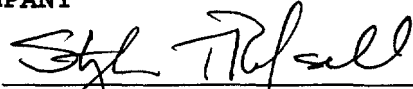
IV. CONCLUSION

13. In Section 275, Congress has clearly set forth the permissible extent of alarm monitoring activities by BOCs over the next five years. The FCC should not let efforts to expand or circumvent what is limited by statute cloud the policy which Section 275 is designed to foster: that all participants in the alarm monitoring services market have a fair opportunity for vigorous competition.

WHEREFORE, THE PREMISES CONSIDERED, Entergy Technology Holding Company respectfully requests that the Commission act upon its Notice of Proposed Rule Making in a manner consistent with the views expressed herein.

Respectfully submitted,

ENTERGY TECHNOLOGY HOLDING
COMPANY

By 

Stephen T. Refsell

Vice President and General Counsel

Dated: September 20, 1996